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10/630,372	07/30/2003	Anil Kumar Goel	14618-009001	8958
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REALNETWORKS, INC. C/O STOEL RIVES LLP 201, S MAIN STREET, SUITE 1100 SALT LAKE CITY, UT 84111			EXAMINER	
			RIVIERE, HEIDI M	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/630,372	<b>Applicant(s)</b> GOEL, ANIL KUMAR
	<b>Examiner</b> HEIDI RIVIERE	<b>Art Unit</b> 3689

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 17 June 2009.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-9, 11-26 and 28-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-9, 11-26 and 28-34 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/1449B)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_

**DETAILED ACTION*****Response to Arguments***

1. Applicant's arguments filed on 17 June 2009 with respect to claims 1-9, 11-26 and 28-34 have been considered however they are not persuasive. Examiner used **Marsh et al. (US 6,574,465 B2)** (hereinafter "Marsh") in view of **Gilliam et al. (US 7,206,765 B2)** (hereinafter "Gilliam") to reject claims 1-36. Currently, claims 10, 27, 35 and 36 are cancelled.

Applicant currently amends the claims to remove reference to data sources in general and replacing this element with "audio streams". Applicant also now argues that the subscriptions detailed are solely for audio streams. To that end a new search had to be performed to reflect the current amendments focusing on audio stream subscriptions.

The **Messina et al. (US 2002/0065037 A1)** (hereinafter "Messina") reference is currently applied to the 35 USC 103(a) rejections. This reference notes in paragraph 21 that "existing services such as the service sold by Bell South Wireless...In operation, the back channel infrastructure may take data that has come from the client and route it tot the profile database 122 to confirm the customer's data request against his currently enable services". Paragraph 6 notes that receiver checks to see if customer has access to the service. If customer does not have access the customer can modify his/her subscription. Paragraph 7 notes that customer's personal information is stored on the system.

2. The 35 USC 112 paragraph 2 rejection has been withdrawn.

Art Unit: 3689

3. 35 USC 101 rejections are currently applied. First based on the Bilski case because there is no tie to a machine or subject matter transformation. Although claim 1 states that the information is receive electronically there is no determination that the determination steps and the identification of the upgrade package is done with a machine or just by an individual.

***Claim Rejections - 35 USC § 101***

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. **Claims 1-9, 11-17** are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

6. In order for a method to be considered a "process" under §101, a claimed process must either: (1) be tied to a particular machine or (2) transform underlying subject matter (such as an article or materials). *In re Bilski*, 545 F. 3d 943, 88 USPQ2d 1385 (Fed. Cir. 2008); *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972). If neither of these requirements is met by the claim, the method is not a patent eligible process under §101 and is non-statutory subject matter. With respect to claims **1-9, 11-17** the claim language does not include the required tie or transformation and thus is directed to nonstatutory subject matter. There is no tie to a machine. For example, although claim 1 states that the information is receive electronically there is no determination that the determining steps and the identification of the upgrade package is done with a

Art Unit: 3689

machine or just by an individual. There is no subject matter transformation and therefore the claims are non-statutory.

7. Furthermore, please note that examiner interprets computer program product as a "storage medium (e.g. CD-ROM, hard disk, or magnetic diskette).

As such a 35 USC 101 rejection has not been applied to claims 18-26 and 28-34.

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 1-9, 11-26 and 28-34** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Messina** in view of **Marsh et al. (US 6,574,465 B2)** (hereinafter "Marsh") and further in view of **Gilliam et al. (US 7,206,765 B2)** (hereinafter "Gilliam").

3. **With respect to claims 1 and 18: (Currently Amended)** Messina in paragraph 21 that "existing services such as the service sold by Bell South Wireless...In operation, the back channel infrastructure may take data that has come from the client and route it tot the profile database 122 to confirm the customer's data request against his currently enable services". Paragraph 6 notes that receiver checks via the Internet to see if customer has access to the service. If customer does not have access to the audio services the customer

Art Unit: 3689

can modify his/her subscription. Paragraph 7 notes that customer's personal information is stored on the system.

Messina does not teach, however Marsh teaches:

- o in response to the determination that the user is denied access to the first online audio stream source identifying one or more upgrade packages that would allow the user to access the first online audio stream source for a predetermined period of time. (Marsh: col. 8, lines 28-42; col. 9, lines 31-53; col. 17, lines 53-67; col. 18, Tables 6-7 - MAMBA system and the decide Plan process determines if a group of subscribers is not on the optimal service plan for whatever reason and suggest alternative cellular service plans; plan package options sorted by cost).
- o Determining an upgrade cost associated with each of the identified upgrade packages, (Marsh: col. 7, line 22- col. 8, line 50 – when plan choices are evaluated a user stored information is reviewed; for example, "zip codes, symbolic of where the user can purchase service (at least their home zip code and possibly one or more zip codes of locations for the user's place of employment) from the user profile are used to find packages"; packages are organized from lowest cost to highest cost)
- o Wherein for each identified upgrade package the determination of the upgrade cost is based at least in part upon a value associated with a list of authorizations already possessed by the user, through the at least one current subscription package, for access to one or more second online audio stream sources included in the identified upgrade package, and;

Art Unit: 3689

- (Marsh: col. 7, line 22- col. 8, line 50 – when plan choices are evaluated a user stored information is reviewed; for example, “zip codes, symbolic of where the user can purchase service (at least their home zip code and possibly one or more zip codes of locations for the user’s place of employment) from the user profile are used to find packages”; packages are organized from lowest cost to highest cost)
- Wherein the upgrade cost associated with each of the identified upgrade packages is discounted for the required authorizations already possessed by the user.

Messina/Marsh do not teach, however as best understood by Examiner,

- Gilliam teaches determining that the user is denied access to the first online audio stream source, wherein the determination that the user is denied access is based on a comparison of the first online audio stream source to at least one current subscriptions package associated with the user, and wherein the comparison indicates that the first online audio stream source is not included in any of the at least one current subscription package; (Gilliam: Fig. 9; col. 5, lines 39-52; col. 6, lines 31-46; col. 41, line 60 – col. 4, lines 3 – digital rights management system can reference, call or locate item associated with rights offer; user can be denied use of item)

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Messina, Marsh and Gilliam. Messina teaches a satellite broadcast delivery system to customers having the

Art Unit: 3689

appropriate radio receiver and subscription for receipt of the audio text. Marsh teaches a system and method for determining optimal wireless communication service plans. The system analyzes wireless communication data while receiving, storing subscriber related information. The marsh system also suggests alternative plans to clients as well as listing cost per package information from lowest cost to highest cost. Gilliam teaches a method for supplying and managing usage rights based on rules. System determines if user is granted or denied use of item.

**4. With respect to claims 2 and 19:** Messina/Marsh teaches the limitations cited in the rejections above. Messina/Marsh does not teach, however Gilliam teaches maintaining a datastore that defines the authorizations possessed by one or more users. (Gilliam: Fig. 9; col. 5, lines 39-52; col. 6, lines 31-46; col. 41, line 60 – col. 4, lines 3 – digital rights management system can reference, call or locate item associated with rights offer; user can be denied use of item ).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Messina, Marsh and Gilliam. Messina teaches a satellite broadcast delivery system to customers having the appropriate radio receiver and subscription for receipt of the audio text. Marsh teaches a system and method for determining optimal wireless communication service plans. The system analyzes wireless communication data while receiving, storing subscriber related information. The marsh system also suggests alternative plans to clients as well as listing cost per package information from lowest cost to highest cost. Gilliam teaches a method for

Art Unit: 3689

supplying and managing usage rights based on rules. System determines if user is granted or denied use of item.

**5. With respect to claims 3, 4, 5, 20 and 21 and 22: (currently amended)**

Messina in paragraph 21 that "existing services such as the service sold by Bell South Wireless...In operation, the back channel infrastructure may take data that has come from the client and route it tot the profile database 122 to confirm the customer's data request against his currently enable services". Paragraph 6 notes that receiver checks via the Internet to see if customer has access to the service. If customer does not have access to the audio services the customer can modify his/her subscription. Paragraph 7 notes that customer's personal information is stored on the system.

**6. With respect to claims 6 and 23: (currently amended)** Messina in paragraph 21 that "existing services such as the service sold by Bell South Wireless...In operation, the back channel infrastructure may take data that has come from the client and route it tot the profile database 122 to confirm the customer's data request against his currently enable services". Paragraph 6 notes that receiver checks via the Internet to see if customer has access to the service. If customer does not have access to the audio services the customer can modify his/her subscription. Paragraph 7 notes that customer's personal information is stored on the system.

Messina/Marsh teaches the limitations cited in the rejections above. Messina/Marsh does not teach, however Gilliam teaches maintaining a datastore that defines a plurality of source packages, wherein each source package

Art Unit: 3689

includes one or more authorizations for sources. (Gilliam: Fig. 9; col. 5, lines 39-52; col. 6, lines 24-46; col. 41, line 60 – col. 4, lines 3 – digital rights management system can reference, call or locate item associated with rights offer; user can be denied use of item; users rights embodied in license).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Messina, Marsh and Gilliam. Messina teaches a satellite broadcast delivery system to customers having the appropriate radio receiver and subscription for receipt of the audio text. Marsh teaches a system and method for determining optimal wireless communication service plans. The system analyzes wireless communication data while receiving, storing subscriber related information. The marsh system also suggests alternative plans to clients as well as listing cost per package information from lowest cost to highest cost. Gilliam teaches a method for supplying and managing usage rights based on rules. System determines if user is granted or denied use of item.

**7. With respect to claims 7 and 24:** (currently amended) Messina in paragraph 21 that "existing services such as the service sold by Bell South Wireless...In operation, the back channel infrastructure may take data that has come from the client and route it tot the profile database 122 to confirm the customer's data request against his currently enable services". Paragraph 6 notes that receiver checks via the Internet to see if customer has access to the service. If customer does not have access to the audio services the customer

Art Unit: 3689

can modify his/her subscription. Paragraph 7 notes that customer's personal information is stored on the system.

Messina does not teach, however Marsh teaches determining which of a plurality of source packages includes a specific authorization required to access the source, thus generating a list of upgrade packages. (Marsh: col. 8, lines 28-42; col. 9, lines 31-53; col. 17, lines 53-67; col. 18, Tables 6-7 - plan package options sorted and listed by cost).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Messina and Marsh. Messina teaches a satellite broadcast delivery system to customers having the appropriate radio receiver and subscription for receipt of the audio text. Marsh teaches a system and method for determining optimal wireless communication service plans. The system analyzes wireless communication data while receiving, storing subscriber related information. The marsh system also suggests alternative plans to clients as well as listing cost per package information from lowest cost to highest cost.

**8. With respect to claims 8 and 25:** (currently amended) Messina in paragraph 21 that "existing services such as the service sold by Bell South Wireless...In operation, the back channel infrastructure may take data that has come from the client and route it tot the profile database 122 to confirm the customer's data request against his currently enable services". Paragraph 6 notes that receiver checks via the Internet to see if customer has access to the service. If customer does not have access to the audio services the customer

Art Unit: 3689

can modify his/her subscription. Paragraph 7 notes that customer's personal information is stored on the system.

Messina does not teach, however Marsh teaches the list of upgrade packages includes one or more discrete source packages. (Marsh: col. 8, lines 28-42; col. 9, lines 31-53; col. 17, lines 53-67; col. 18, Tables 6-7 - plan package options sorted and listed by cost).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Messina and Marsh. Messina teaches a satellite broadcast delivery system to customers having the appropriate radio receiver and subscription for receipt of the audio text. Marsh teaches a system and method for determining optimal wireless communication service plans. The system analyzes wireless communication data while receiving, storing subscriber related information. The marsh system also suggests alternative plans to clients as well as listing cost per package information from lowest cost to highest cost.

**9. With respect to claims 9 and 26:** (currently amended) Messina in paragraph 21 that "existing services such as the service sold by Bell South Wireless...In operation, the back channel infrastructure may take data that has come from the client and route it tot the profile database 122 to confirm the customer's data request against his currently enable services". Paragraph 6 notes that receiver checks via the Internet to see if customer has access to the service. If customer does not have access to the audio services the customer can modify his/her subscription. Paragraph 7 notes that customer's personal information is stored on the system.

Art Unit: 3689

Messina does not teach, however Marsh teaches the list of upgrade packages includes one or more premium source packages. (Marsh: col. 8, lines 28-42; col. 9, lines 31-53; col. 17, lines 53-67; col. 18, Tables 6-7 - plan package options sorted and listed by cost).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Messina and Marsh. Messina teaches a satellite broadcast delivery system to customers having the appropriate radio receiver and subscription for receipt of the audio text. Marsh teaches a system and method for determining optimal wireless communication service plans. The system analyzes wireless communication data while receiving, storing subscriber related information. The marsh system also suggests alternative plans to clients as well as listing cost per package information from lowest cost to highest cost.

Furthermore, the data identifying types of data source packages is non-functional descriptive data.

When presented with a claim comprising descriptive material, an Examiner must determine whether the claimed nonfunctional descriptive material should be given patentable weight. The Patent and Trademark Office (PTO) must consider all claim limitations when determining patentability of an invention over the prior art. *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401,404 (Fed. Cir. 1983). The PTO may not disregard claim limitations comprised of printed matter. See *Gulack*, 703 F.2d at 1384-85,217 USPQ at 403; see also *Diamond v. Diehr*, 450 U.S. 175, 191,209 USPQ 1, 10 (1981). However, the examiner need not give patentable weight to descriptive material absent a new and unobvious functional

Art Unit: 3689

relationship between the descriptive material and the substrate. See *In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994); *In re Ngai*, 367 F.3d 1336, 1338, 70 USPQ2d 1862, 1863-64 (Fed. Cir. 2004). Thus, when the prior art describes all the claimed structural and functional relationships between the descriptive material and the substrate, but the prior art describes a different descriptive material than the claim, then the descriptive material is nonfunctional and will not be given any patentable weight. That is, such a scenario presents no new and unobvious functional relationship between the descriptive material and the substrate.

The Examiner asserts that the data identifying the selectable options and the information displayed upon selection of each option adds little, if anything, to the claimed acts or steps and thus do no serve as limitations on the claims to distinguish over the prior art. MPEP 2106IV b 1(b) indicates that "nonfunctional descriptive material" is material "that cannot exhibit any functional interrelationship with the way the steps are performed". Any differences related merely to the meaning and information conveyed through data, which does not explicitly alter or impact the steps is non-functional descriptive data. Except for the meaning to the human mind, the data identifying types of data source packages does not functionally relate to the substrate and thus does not change the steps of the method as claimed. The subjective interpretation of the data does not patentably distinguish the claimed invention.

**10. With respect to claims 10 and 27: (Cancelled).**

Art Unit: 3689

**11. With respect to claims 11 and 28: (currently amended)** Messina teaches the limitations cited in the rejection above. Messina does not teach, however Marsh discloses: sorting the list of upgrade packages based on the upgrade cost associated with each of the upgrade packages. (Marsh: col. 8, lines 28-42; col. 9, lines 31-53; col. 17, lines 53-67; col. 18, Tables 6-7 - plan options sorted by cost).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Messina and Marsh. Messina teaches a satellite broadcast delivery system to customers having the appropriate radio receiver and subscription for receipt of the audio text. Marsh teaches a system and method for determining optimal wireless communication service plans. The system analyzes wireless communication data while receiving, storing subscriber related information. The marsh system also suggests alternative plans to clients as well as listing cost per package information from lowest cost to highest cost.

**12. With respect to claims 12 and 29: (currently amended)** Messina teaches the limitations cited in the rejection above. Messina does not teach, however Marsh discloses: sorting the list of upgrade packages based on a profit margin associated with each of the upgrade packages. (Marsh: col. 8, lines 28-42; col. 9, lines 13-30; col. 17, lines 53-67; col. 18, Tables 6-7; col. 33, lines 8-19 – calling profile of customer assessed based on usage time of day, geographic location and type of calls made; chosen plan based on cost effective values; plan options sorted by cost).

Art Unit: 3689

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Messina and Marsh. Messina teaches a satellite broadcast delivery system to customers having the appropriate radio receiver and subscription for receipt of the audio text. Marsh teaches a system and method for determining optimal wireless communication service plans. The system analyzes wireless communication data while receiving, storing subscriber related information. The marsh system also suggests alternative plans to clients as well as listing cost per package information from lowest cost to highest cost.

**13. With respect to claims 13 and 30: (currently amended)** Messina teaches the limitations cited in the rejection above. Messina does not teach, however Marsh discloses sorting the list of upgrade packages based on a predetermined marketing preference. (Marsh: col. 8, lines 28-42; col. 9, lines 13-30; col. 17, lines 53-67; col. 18, Tables 6-7 – calling profile of customer assessed based on usage time of day, geographic location and type of calls made; plan options sorted by cost).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Messina and Marsh. Messina teaches a satellite broadcast delivery system to customers having the appropriate radio receiver and subscription for receipt of the audio text. Marsh teaches a system and method for determining optimal wireless communication service plans. The system analyzes wireless communication data while receiving, storing subscriber related information. The marsh system also suggests alternative plans to clients as well as listing cost per package information from lowest cost to highest cost.

Art Unit: 3689

14. **With respect to claims 14 and 31:** Messina teaches the limitations cited in the rejection above. Messina does not teach, however Marsh discloses::

- determining an undiscounted cost for an upgrade package; (Marsh: col. 8, lines 28-42; col. 9, lines 13-30; col. 17, lines 53-67; col. 18, Tables 6-7 – calling profile of customer assessed based on usage time of day, geographic location and type of calls made; chosen plan based on cost effective values; plan options sorted by cost) and
- discounting the undiscounted cost based on a value associated with a list of the required authorizations already possessed by the user. (Marsh: col. 8, lines 28-42; col. 9, lines 13-30; col. 17, lines 53-67; col. 19, Table 8 and line 60 – col. 20, line 6 – calling profile of customer assessed based on usage time of day, geographic location and type of calls made; chosen plan based on cost effective values; plan options sorted by cost and also factors in discounts).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Messina and Marsh. Messina teaches a satellite broadcast delivery system to customers having the appropriate radio receiver and subscription for receipt of the audio text. Marsh teaches a system and method for determining optimal wireless communication service plans. The system analyzes wireless communication data while receiving, storing subscriber

Art Unit: 3689

related information. The marsh system also suggests alternative plans to clients as well as listing cost per package information from lowest cost to highest cost.

**15. With respect to claims 15 and 32: (currently amended)** Messina teaches the limitations cited in the rejection above. Messina does not teach, however Marsh discloses:

- determining an undiscounted cost for an upgrade package; (Marsh: col. 8, lines 28-42; col. 9, lines 13-30; col. 17, lines 53-67; col. 18, Tables 6-7 – calling profile of customer assessed based on usage time of day, geographic location and type of calls made; chosen plan based on cost effective values; plan options sorted by cost) and
- discounting the undiscounted cost based on a promotional discount. (Marsh: col. 7, lines 30-39 – promotions taken into consideration when selecting optimal service plans).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Messina and Marsh. Messina teaches a satellite broadcast delivery system to customers having the appropriate radio receiver and subscription for receipt of the audio text. Marsh teaches a system and method for determining optimal wireless communication service plans. The system analyzes wireless communication data while receiving, storing subscriber related information. The marsh system also suggests alternative plans to clients as well as listing cost per package information from lowest cost to highest cost.

Art Unit: 3689

16. **With respect to claims 16 and 33: (currently amended)** Messina in paragraph 21 that "existing services such as the service sold by Bell South Wireless...In operation, the back channel infrastructure may take data that has come from the client and route it to the profile database 122 to confirm the customer's data request against his currently enable services". Paragraph 6 notes that receiver checks via the Internet to see if customer has access to the service. If customer does not have access to the audio service the customer can modify his/her subscription. Paragraph 7 notes that customer's personal information is stored on the system.

Messina does not teach, however Marsh discloses:

- determining an upgrade cost for each of the upgrade packages includes determining which of the upgrade packages requires one or more prerequisite online audio stream source packages. (Marsh: col. 8, lines 28-42; col. 9, lines 13-30; col. 17, lines 53-67; col. 18, Tables 6-7 – calling profile of customer assessed based on usage time of day, geographic location and type of calls made; plan options sorted by cost).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Messina and Marsh. Messina teaches a satellite broadcast delivery system to customers having the appropriate radio receiver and subscription for receipt of the audio text. Marsh teaches a system and method for determining optimal wireless communication service plans. The system analyzes wireless communication data while receiving, storing subscriber

Art Unit: 3689

related information. The marsh system also suggests alternative plans to clients as well as listing cost per package information from lowest cost to highest cost.

**17. With respect to claims 17 and 34: (currently amended)** Messina in paragraph 21 that "existing services such as the service sold by Bell South Wireless...In operation, the back channel infrastructure may take data that has come from the client and route it tot the profile database 122 to confirm the customer's data request against his currently enable services". Paragraph 6 notes that receiver checks via the Internet to see if customer has access to the service. If customer does not have access to the audio service the customer can modify his/her subscription. Paragraph 7 notes that customer's personal information is stored on the system.

Messina does not teach, however Marsh discloses:

- determining an undiscounted cost for an upgrade package that requires one or more prerequisite source packages; (Marsh: col. 8, lines 28-42; col. 9, lines 13-30; col. 17, lines 53-67; col. 18, Tables 6-7 – calling profile of customer assessed based on usage time of day, geographic location and type of calls made; chosen plan based on cost effective values; plan options sorted by cost).
- increasing the undiscounted cost based on a cost associated with the one or more prerequisite source packages; (Marsh: col. 8, lines 28-42; col. 9, lines 13-30; col. 17, lines 53-67; col. 19, Table 8 and line 60 – col. 20, line 6 – calling profile of customer assessed based on usage time of day, geographic location and type of calls made;

chosen plan based on cost effective values; plan options sorted by cost and also factors in discounts) and

- discounting the undiscounted cost based on a value associated with the required authorizations already possessed by the user. (Marsh: col. 8, lines 28-42; col. 9, lines 13-30; col. 17, lines 53-67; col. 19, Table 8 and line 60 – col. 20, line 6 – calling profile of customer assessed based on usage time of day, geographic location and type of calls made; chosen plan based on cost effective values; plan options sorted by cost and also factors in discounts).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Messina and Marsh. Messina teaches a satellite broadcast delivery system to customers having the appropriate radio receiver and subscription for receipt of the audio text. Marsh teaches a system and method for determining optimal wireless communication service plans. The system analyzes wireless communication data while receiving, storing subscriber related information. The marsh system also suggests alternative plans to clients as well as listing cost per package information from lowest cost to highest cost.

Art Unit: 3689

### **CONCLUSION**

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Heidi Riviere whose telephone number is 571-270-1831. The examiner can normally be reached on Monday-Friday 9:00am-5:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Janice Mooneyham can be reached on 571-272-6805. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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